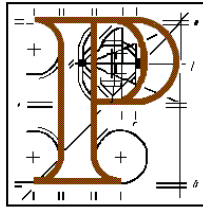


An Bord Pleanála



Inspector's Report

Development: Permission to continue the use of the existing 30m high free standing monopole structure, carrying antennae and communication dishes, within an existing 2.4m high palisade compound (previously granted temporary permission under LPA Ref. 20101253.

Planning Application

Planning Authority: Wexford County Council
Planning Authority Reg. Ref.: 2015/0864
Applicant: ESB Telecoms
Type of Application: Permission
Planning Authority Decision: Grant Permission

Planning Appeal

Type of Appeal: 1st Party v Financial Contribution
Appellants: As Above

Inspector: Emer Doyle

INTRODUCTION

This report relates to a first party appeal against the financial contribution condition applied by Wexford County Council in their decision to grant permission.

SITE LOCATION AND DESCRIPTION

The appeal site is located within the townland of Moyne Upper to the east of the of the N11. The site lies within an industrial park to the north of the town of Enniscorthy, Co. Wexford.

PROPOSED DEVELOPMENT

Permission is sought for to continue the use of the existing 30m high free standing monopole structure. The structure carries 3 No. antennae and 7 No. dishes and is shared by several operators.

RELEVANT PLANNING HISTORY

PA Ref. 20101253: Permission was granted by Wexford County Council for (a) the retention of the existing 30 metre high, free standing monopole communication structure, carrying antennae and communication dishes, within the existing 2.4m high palisade compound previously granted under PA 20053147 and (b) permission to attach additional 6 x 1.5m panel antennae and 4 x 0.6m dishes to allow for future third party co-location at esb telecoms existing telecommunications compound at esb's former enniscorthy area office – 5 year permission. No conditions relating to development contributions.

PA Ref. 20053147: Permission was granted by Wexford County Council for the erection of a 30 metre high free standing communications structure, carrying antennae and communication dishes, with associated ground-mounted equipment cabinets to share with other licensed operators within a 2.4 metre high palisade compound – 5 year permission. Condition No. 3 required a development contribution.

TECHNICAL REPORTS

The planner's report notes that a roads levy was attached to 20053147 and no levies were attached to 20101253. It considered that the proposal to retain the mast was acceptable and a temporary permission was no longer appropriate in accordance with circular PL07/12.

PLANNING AUTHORITY'S DECISION

The Planning Authority granted permission subject to 3 conditions. Condition No. 2 is financial in content as follows:

- 2. The Developer shall pay to Wexford County Council a contribution in respect of works, consisting of the provision or improvement of community facilities in the functional area of the Planning Authority. The contribution shall be payable within 2 months of the date of the final*

grant of permission and the amount shall be three thousand euro (€3,000.00) as stated in Appendix 1 of this document.

Reason: In accordance with the Development Contribution Scheme as provided for under the Planning and Development Acts 2000 (as amended).

FIRST PARTY GROUNDS OF APPEAL

ESB Telecoms Ltd. has submitted a first party appeal and seeks the removal of the development contribution condition as applied by Wexford County Council in their decision to grant permission. The submission can be summarised as follows:

- Appeal is made pursuant to Section 48(10) b of the Planning and Development Act 2000 against condition No. 2 only.
- Condition No. 3 of 20053147 required a development contribution of €2000 which was paid by the developer.
- The requirement to pay a second development contribution is double charging and contrary to Circular letter PL07/12.
- The adopted Development Contributions scheme states that mast sharing and the erection of equipment on buildings will be exempted development.
- There are three mobile operators currently operating at the site and it should therefore be exempt.

PLANNING AUTHORITY RESPONSE

The Planning Authority response can be summarised as follows:

- In accordance with the 2013 Development Contribution Scheme, development contributions totalling €3000 for community were applied.
- As per the 2013 or current Development Contribution Scheme, this is a full permission, not a temporary permission and therefore no discount is applicable.
- As per the 2013 or current Development Contribution Scheme, mast sharing and erection of equipment on buildings will be exempted from contributions, which does not apply in respect of this free standing mast.
- A roads levy was applied to 20053147. No levies were applied to 20101253 as the mast was under the 50 metre threshold in accordance with the 2007 development contribution scheme in place at the time.

FIRST PARTY RESPONSE TO PLANNING AUTHORITY RESPONSE

- The response refers to similar cases appealed to the Board under PL26.242719, PL26.243557, and PL26.243556 where development contributions were paid previously.
- It is requested that the Board remove the development contribution.

PLANNING CONTEXT

Development Plan

The Wexford County Development Plan 2013-2019 applies to the subject site. Section 9.3 of the Plan recognises that the “*development of high quality telecommunications infrastructure is critical to advance the economic and social development of the county*”. It states that the “*council is committed to enhancing the telecommunications network and infrastructure throughout the county*” and that “*this must be managed to ensure a balance between the provision of telecommunications infrastructure in the interests of social and economic progress and sustaining residential amenity and environmental quality*”. Objective TC02 states that the Council will “*have regard to the Telecommunications Antennae and Support Structures-Guidelines for Planning Authorities (DOEHLG, 1996)*”.

Development Contribution Scheme (DCS) 2013

The Development Contribution Scheme was adopted and in force from 14th October 2013 and it states that the main purpose of the review of the 2007 Scheme was to “*provide a number of reductions to the contributions charged to developments*”. On the issue of Telecommunication Masts it is stated “*as required by the “Development Contributions Guidelines for Planning Authorities” reductions will apply to temporary permissions. Mast sharing and erection of equipment on buildings will be exempted from contributions*”.

Masts		33%	50%	66%
		3 years	5 years	10 years
Water	0	0	0	0
Waste Water & Drainage	0	0	0	0
Roads	3,000	1,000	1,500	2,000
Recreational & Community	3,000	1,000	1,500	2,000
Total	6,000	2,000	3,000	4,000

Telecommunication structures are not identified under exemptions as per the DCS 2013.

Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities (July 1996)

These guidelines set out the government’s key ambitions for a top quality telecommunications service throughout the State, whilst recognising that environmental factors will need to be taken into consideration in the determination of relevant applications.

Circular Letter PL07/12

This circular letter was issued in the context of the rollout of next generation broadband (4G). This document sought to address issues that had arisen in the intervening period since the publication of the “*Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities*” published in July 1996 and

to amend them. Section 2.2 of the Letter considers “Temporary Permissions” and states that in the Department’s experience masts are in place for a number of years and therefore Planning Authorities are advised *“that from the date of this Circular Letter, attaching a condition to a permission for telecommunication masts and antennae which limit their life to a set temporary period should cease”*. Section 2.4 of the Guidelines considers *“Bonds for Removal of Redundant Structures”* wherein, it is advised that Planning Authorities no longer seek the lodgement of a bond or cash deposit by condition to effect the removal of a mast in the case of obsolescence. Rather, it is recommended that *“future permissions should simply include a condition stating that when the structure is no longer required it should be demolished, removed and the site re-instated at the operator’s expense”*.

“Development Contributions: Guidelines for Planning Authorities”, January 2013, DoECLG.

Development Contribution Schemes were introduced in 2000 and since then there has been a significant change in Ireland’s economy. The new Guidelines seek to maintain the valuable principles of the existing schemes, however, local authorities are now urged by means of the Development Contribution Schemes to achieve the right balance going forward between generating the revenues required to provide the necessary infrastructure and creating the right conditions to support sustainable development patterns, economic activity and renewal. With particular respect to the appeal under consideration, the following excerpts are considered relevant:

The Guidelines consider that development contributions are not cash-cows: there is an important balance to be struck between the funding of public infrastructure and the need to encourage economic activity and promote sustainable development patterns. The Guidelines consider that *“the practice of “double charging” is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing “planning gain” in an equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.”* Broadband is considered in the context of creating the right conditions for economic activity and local authorities are required to provide *“waivers to broadband infrastructure (masts and antennae)”*.

ASSESSMENT

The current appeal is made under Section 48(10)(b) of the Planning and Development Act, 2000 as amended. Consequently, the only question to be addressed is whether the terms of the development contribution scheme have been properly applied by the planning authority in its imposition of condition No. 2 only.

I note that there are two history cases relating to the current site. Under 20053147, a development contribution of €2,000 towards provision or improvements to the public roads serving the area was paid to comply with condition No. 3. Permission was granted for a 5 year period only. Under 20101253, no development contributions were charged and retention permission was granted for a 5 year period only.

The Planning Authority response states that in accordance with the 2013 Development Contribution Scheme, development contributions totalling €3000 for

community were applied. I note that under the 2013 Development Contributions Scheme, levies for permanent masts are €3,000 for roads and €3,000 for recreational and community. I note that no roads levy has been applied to the current application and the levy applies to community facilities only.

It is stated in the Development Contributions Guidelines for Planning Authorities that the practice of 'double charging' is inconsistent with both the primary objective of levying development contributions and with the spirit of capturing 'planning gain' in a equitable manner. Authorities are reminded that any development contribution already levied and paid in respect of a given development should be deducted from the subsequent charge so as to reflect that this development had already made a contribution.

The First Party response to the submission from Wexford County Council refers to three previous appeals to the Board under PL26.242719, PL26.243557, and PL26.243556. In all three cases, the applicant had previously paid a development contribution and the Board did not include any financial contributions in the case of PL26.242719, and directed the Council to remove the financial contributions in the cases of PL26.243557, and PL26.243556.

I note that the developer paid in full the required contribution under 20053147. Notwithstanding the fact that the Development Contribution Scheme has changed and a contribution is now required specifically in relation to community and recreation as well as roads, my view is that the developer paid the development contribution required at the time permission was originally granted and any further requirement to pay a development contribution would amount to 'double charging'.

I do not consider that the exemption provided for mast sharing in the Development Contribution Scheme 2013 applies to this free standing mast.

Having regard to the fact that a development contribution has already been paid for the mast itself and to the precedent set by the Board's previous decisions concerning similar issues, I am of the view that the terms of the Development Contribution Scheme for the area have not been properly applied in respect of condition number 2.

RECOMMENDATION

I have read the submissions on file and paid due regard to the provisions of the "Wexford County Development Plan 2013", the "Development Contribution Scheme 2013", the "Development Contribution Scheme-Guidelines for Planning Authorities", 2013, and the "Telecommunications Antennae and Support Structures: Guidelines for Planning Authorities", DOEHLG 1996 (as amended by Circular Letter PL07/12). In light of my assessment, I recommend to the Board that the Council be directed to remove condition number 2 and the reason therefor.

REASONS AND CONSIDERATIONS

The proposed development is for continuance of use of an existing telecommunications mast and mobile phone infrastructure. Having regard to the parent permission granted under planning register number 20053147, which included a condition requiring the payment of a financial contribution under the Development Contributions Scheme and which condition was complied with, it is considered that the appropriate contribution has been paid in respect of this

development and that, in these circumstances, it would be an unreasonable interpretation of the Development Contribution Scheme to require a further contribution which would amount to double charging.

Emer Doyle

Planning Inspector

27th January 2016